Millwrights Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Clayton A. Bernier and The Detroit Edison Company, UE&C Catalytic, Inc., and United Mechanical and Conveyor, Inc. Cases 7–CB–10129(1) and 7–CB–10206

September 6, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On May 16, 1995, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. The Respondent and the General Counsel each filed an answering brief to the other's exceptions and a reply brief to the other's answering brief.

The Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions in part and to adopt the recommended order as modified and set forth in full below.[2]

1. The judge found, inter alia, that the Respondent violated Section 8(b)(2) and 8(b)(1)(A) of the Act by discouraging Charging Party Clayton Bernier from filling out an application to work at the Detroit Edison, Fermi 2 plant. In so finding, the judge found that the Respondent exaggerated the requirements and stringency in the screening process for employment at the Fermi 2 plant. We disagree.

The procedures for obtaining employment at the Fermi 2 plant are described in the judge's decision. Briefly, UE&C Catalytic, Inc., the maintenance contractor for Detroit Edison schedules "outages" or planned shutdowns at the Fermi 2 plant approximately every 18 months to coincide with Fermi 2's nuclear refueling. During this "outage," UE&C hires millwrights and other skilled workers to maintain and repair equipment. The millwrights are hired through a nonexclusive hiring hall referral system with the Respondent. Employment with the Fermi 2 plant requires an extensive security test, including drug, alcohol, and psychological tests, as well as FBI criminal background screening. Employees are permitted to "prequalify" for work at Fermi 2 by filling out the required paperwork and submitting to the required tests. Typically, UE&C will notify the Respondent prior to the outage that it will be hiring millwrights, and the security paperwork is made available to employees at that time to begin to "prequalify" for the work. Employees may obtain this paperwork from the Respondent or directly from UE&C, and a referral from the Respondent is not required.

In October 1993, the Respondent announced at a union meeting that UE&C would be hiring for the Fermi 2 plant and that "prequalification" packets (i.e., the security paperwork) were available. At that meeting, Bernier requested a packet and received it. The Respondent's business agent, Charles Pack, told Bernier that his criminal record might be an obstacle to employment with Fermi 2. This concern over Bernier's criminal record was reiterated by Pack to Bernier in a subsequent conversation on January 4, 1994, in which Pack stated that the Employer would consider felonies which occurred between 5 and 15 years prior to the application.

We do not agree that Pack's comments to Bernier regarding his criminal record consitituted unlawful discouragement of Bernier's making an application with Fermi 2. Initially, we note that the Respondent had no power to prevent Bernier from receiving a prequalification packet or from applying for work at the Fermi 2 plant. Indeed, when requested, the Respondent gave Bernier the prequalification packet without reservation, and there is no evidence that the Respondent tried to withhold the packet or dissuade Bernier from receiving it. In addition, there is no evidence that Bernier was told by Pack or any other agent of the Respondent that his criminal record would conclusively preclude his employment with Fermi 2, that applying would be futile, or that he should not apply. Further, Pack's comments to Bernier regarding his criminal record are consistent with Detroit Edison's policy. Joseph Korte, the director of security at Fermi 2, testified that although an applicant's criminal record is not the only or determining factor in evaluating that applicant's suitability for employment at Fermi 2, Detroit Edison does consider all felonies, even as far back as 20 years. Moreover, we note that Pack's comments to Bernier during the January 4 conversation were in response to Bernier's inquiries to Pack regarding certain questions contained in the packet and appear to have been made in the context of Pack's assisting Bernier in answering those questions. Accordingly, for all of the foregoing reasons, we find that the Respondent did not unlawfully discourage Bernier from applying for work at the Fermi 2 plant, in violation of Section 8(b)(2) and 8(b)(1)(A).

2. Although we find no unlawful discouragement in Pack's comments, we adopt the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1950). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

by refusing to refer Bernier to work at the Fermi 2 plant.[3] Contrary to the Respondent's exception, we find no fatal infirmity in the judge's reliance on the referral of employee Russel Janis—who, like Bernier, had a felony conviction—as evidence of disparate treatment in referrals. Although Janis, unlike Bernier, had completed apprenticeship training and was prequalified to work at Fermi 2, the Respondent's referral of him serves to disprove its argument that Bernier's criminal record was a disqualifying factor. As noted above, Detroit Edison's director of security testified only that criminal records were taken into consideration. As for the matter of prequalification, we agree with the judge that the evidence shows that even applicants who were not prequalified could be, and were in fact from time to time, successfully referred to jobs at Fermi 2. Thus, James Anderson, the project manager at Fermi 2 for UE&C, testified that—although he preferred to get prequalified applicants and generally specified this in his requests—he accepted referrals of those who were not prequalified. Indeed, Anderson testified that he did not like to "over prequalify," because this meant requiring some workers to take off 2 days, possibly from another job, to go through the prequalification procedure with nothing to show for it afterwards. Anderson said he also believed it his duty to accommodate the Respondent's "out of work list." Exhibits in evidence (G.C. Exhs. 14 and 16), together with the testimony of Anderson, support the judge's finding that the UE&C had hired at least 77 millwrights by July 25 (a larger number than in past years because a breakdown of a turbine in the previous December had greatly increased the need for millwrights in 1994). According to Anderson, only 41 millwrights had prequalified. But even accepting Business Agent Pack's claim that as many as 48 had prequalified and that it was the Respondent's usual practice to refer those who prequalified before others who had not, it is still clear that Bernier, who had been 29th on the hiring hall's out-of-work list in January 1994, should have been reached if the Respondent had been making referrals in a nondiscriminatory manner.

[3] The judge also found that the refusal to refer violated Sec. 8(b)(2) of the Act. We do not adopt that finding because the potential referrals were in the context of a nonexclusive hiring hall. In such circumstances a union which offers referral assistance may violate Sec. 8(b)(1)(A) of the Act by failing to "act in an 'even-handed-manner toward all its members, [i.e.] without discrimination based on the exercise of Sec. 7 rights,'" but the conduct does not violate Sec. 8(b)(2). *Plasterers Local 121*, 264 NLRB 192, 195 (1982) (citations omitted). The affirmative relief for the violation is the same even without the 8(b)(2) finding. Id.

In adopting the 8(b)(1)(A) finding, we do not rely on the Respondent's removal of Bernier as shop steward as evidence of the Respondent's animus toward Bernier.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Millwrights Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to refer Clayton Bernier for employment at the Fermi 2 plant because he engaged in protected dissident union activity.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the Act.

(a) Make Clayton Bernier whole for any loss of pay he incurred by reason of his failure to be referred by the Local to employment at the Fermi 2 plant in the manner set forth in the remedy section of the judge's decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its meeting halls, offices, hiring halls, or any places where it customarily posts notices to its employees and members in Warren, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

3. Substitute the attached notice for that of the administrative law judge.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint allegations at paragraphs 12, 13, 17, 18, and 21 be dismissed for lack of Board jurisdiction.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to refer Clayton Bernier for employment at the Fermi 2 plant because of his protected dissident union activity.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Clayton Bernier whole for any loss of earnings he may have suffered because of our refusal to refer him to the Fermi 2 plant, plus interest.

MILLWRIGHTS LOCAL NO. 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL–CIO

Mark D. Rubin, Esq. and *Amy J. Roemer, Esq.*, for the General Counsel.

Christopher P. Legghio, Esq., of Southfield, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., ADMINISTRATIVE LAW JUDGE. This case went to trial on November 7, 8, and 9, 1994, in Detroit, Michigan, based on a charge in Case 7–CB–10129(1) filed May 13 and amended May 26, 1994, and a charge in Case 7–CB–10206 filed July 22, 1994, by Clayton Bernier against Respondent Union (Respondent or Local 1102). An original complaint issued June 30, 1994. A charge in Case 7–CA–36042(1) was filed on June 8, 1994, also by Bernier against Commercial Contracting Corporation leading to an amended consolidated complaint being issued August 10, 1994, covering both the CB and CA charges. However, the Region severed the CA case out on November 4, 1994, following settlement, leaving the CB case allegations for trial. After this hearing closed, the General Counsel filed a motion to correct the record by substituting certain exhibits received into the record with differently dated exhibits, supplying a missing page in General Counsel's Exhibit 15, and an omitted General Counsel's Exh. 33, and clarifying the description of General Counsel's Exhibit 33, accompanied by proof of service on the parties, on December 16, 1994. Counsel assures that every effort to ascertain Respondent counsel's position on the motion was made, but without success, and that based on prior discussion with Respondent counsel the General Counsel is under the impression that he would have no objection. Based thereon, and as I see no prejudice in this largely housekeeping motion to Respondent, who files no objection thereto, it is granted. The motion and attachments are hereby marked in the order appearing in the stapled collection as Administrative Law Judge 1–23 and received into the record as an integrated entire exhibit. The transcription of testimony by Respondent witness Diane Wilks erroneously ascribes a reply by her to the question whether she recalled a contract between the Union and United Mechanical and Conveyor, Inc. dated May 1993 being received as "yes" when her actual answer is "no" and the record is hereby sua sponte corrected. (Tr. 506.)

The issues in this case are whether Respondent Union discouraged the Charging Party from applying for work at the Detroit Edison Fermi 2 plant, and failed to refer him for employment there, because of his protected activities running for local union office and opposing union officers and policies.

Based on the entire record, including the parties' briefs as well as credibility resolutions I find that Respondent engaged in the conduct as alleged above in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act, and recommend Respondent be ordered to cease and desist therefrom and make the Charging Party whole for any losses of pay arising from Respondent's unlawful conduct. I make the following

FINDINGS OF FACT

I. JURISDICTION

Detroit Edison Company is a public utility corporation located in Detroit, Michigan, and operates several facilities throughout Michigan, including its Fermi 2 power plant located at Monroe, Michigan (Fermi 2 plant), the only facility involved herein, and produces, sells, and distributes electrical power. Detroit Edison Company annually has gross revenues in excess of $500,000 and purchases goods valued in excess of $50,000 directly from points outside Michigan. UE&C Catalytic, Inc. (UE&C) is a corporation with offices at the Fermi 2 plant where it is engaged in providing personnel services for Detroit Edison. UE&C annually provides services valued in excess of $50,000 for Detroit Edison. I find, as the parties agree, that these corporations are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act. As for the matter of jurisdiction over United Mechanical and Conveyor, Inc. (United) see my discussion below.

II. THE UNFAIR LABOR PRACTICES

A. *The Refusal to Refer*

Complaint paragraph 20 alleges that:

> From about February through mid-July 1994 Respondent Local 1102 by its agents [sic] Charles Pack, [unlawfully] failed and refused to refer the Charging Party to UE&C for possible employment at Detroit Edison's Fermi 2 plant, despite the Charging Party's requests.

B. *Activity and Respondent Knowledge*

Charging Party Bernier joined Local 1102 as millwright in 1978, attended a Carpenters Union state convention for the Carpenters District Council in 1986 and two annual meetings afterward, and ran for business manager/financial secretary in the Local against incumbent Ralph Mabry in June 1992. Mabry also holds offices as chairman over pension and health and welfare committees as well as president for the Carpenters District Council.

In September 1991, Respondent Business Agent Charles Pack met him and asked why Bernier was running against Mabry and after having reasons related to the need for improved representation and the funds being linked to organized crime, responded that it would hurt him to run.

During the campaign the Charging Party expressed criticism against Respondent's officers' leadership policies regarding the management of the Union's trust funds, sending out flyers to fellow members and officers alike, including Local 1102 President Jerry Moore and Treasurer Frank Benson. He held two rallies in May and June 1992, focusing on such criticism, charging that fund management had links to organized crime, and circulating news articles in support. The circular cited that issue as the most controversial one, raised criticism about the Local's referral system and appointment of business agents, and questioned Mabry's dedication to serving members' interests. (G.C. Exh. 3.) Mabry won the election but the Charging Party continued expressing objection to Respondent's policies to the membership, including at a jobsite while serving as shop steward in November 1993.

C. *Respondent's Animus*

Respondent President Moore admitted that when he learned about this he removed the Charging Party as shop steward and appointed another member to the position. He testified the reason for this action at a job in Eastland Center, where he could not identify the employer contractor, as being "Because he was going around bad mouthing us and telling everybody he worked with, [sic] and I didn't want him representing me, or my local as a steward; _____ as part of the Union. That we were controlled by the Mafia, and things to that nature. It was the result of those remarks I removed him." Although time barred by Section 10(b) of the Act the incident reflects animus.

Evidencing Respondent animus further, Bernier's wife testified that during an encounter with Mabry at his office on November 17, 1993, over signing another contract for her company—about which more below—she asked Mabry why he removed her husband from a position as shop steward and he replied he wouldn't have him out there representing the Union when he was talking about the Union. She asked him why Clay (Bernier) wasn't being sent out on jobs, and he said because Clay was talking about him. Mabry was not asked to deny this and Jane Bernier is credited.

Just 2 days later she was with Moore at the union office about a different contract matter when Moore asked why Clay was starting trouble. She replied, "[B]ecause he's not being sent out for work." Moore said, "I'm not going to sit here and tell you _____ that I outright told anyone not to hire Clay." She replied, "Of course not, because you know you'd get in trouble," and Moore said, "[R]ight," following up with the comment, "Don't give a union a hard time, because they can give you a hard time." On her way out Moore said, "Unions can help you." She replied she didn't expect any help from this Union because she was married to Clay and Moore said, "Right." Moore testified he couldn't recall if she asked about job referrals and gave responses to questions which also failed to track Mrs. Bernier's testimony which is thus left untouched and credited.

Mabry himself testified he called a Commercial Contracting official in 1993 at a Dodge City job where he learned Bernier was working and criticizing the Union. He testifies he told the official:

> I'm getting reports he's [Bernier] again walking around disrupting membership by showing them felonious [sic] statements about the mafia and I asked him would you please kindly refrain Clay from doing that on the job . . . I do not want the companies involved to think that 1102 were crooks [sic].

Respondent Agent Pack visited a jobsite called Wyandotte on October 28, 1993, where Bernier's wife's company, United, was working and caused the job to be shut down allegedly because Pack believed that United had no contract with Respondent. Later on November 16, 1993, both Moore and Pack visited a United job at Ford Wixom and threatened to shut it down advancing the position that United had no contract and further, that United had not paid any contributions on employees' behalf into the fringe funds, even though the evidence is clear that such payments had been made and payment accepted on November 8, 1993, and union-scale wages paid to employees. Notwithstanding Mrs. Bernier's efforts to show Moore a copy of the contract signed on May 17, 1993, to resolve matters he refused to accept it during their meeting described above on November 16, 1993. This despite the history of United's agreements with Local 1102, the payment of fringe benefits, union-scale wages, and earnest efforts to clear the air by offering Bernier's copy to Moore as proof. In the interim between the Wyandotte and Ford Wixom shutdown and threatened shutdown, Pack, with Mabry's consent, filed 10 charges against Bernier on November 3, 1993, in which Respondent failed to even provide a shred of supporting evidence for, and which are refuted at the Carpenters District Council trial board on February 9, 1994, leading to outright dismissal and a finding, viewing the transcript and attachment of United's contract to the decisions in tandem, that the trial board, one member stating such, considered a contract to be in place. The baseless nature of the charges is evident from that transcript and the record before me in this case and deserves no further comment. The initiation of these interunion charges arises in a context of animus towards the member's activities previously described and adds an even more serious dimension to Respondent's settled animus. But to add insult to injury on February 22, 1994, at a special meeting at the Local 1102 hall which Moore conducted attended by officers and members, after the Charging Party announced he had been found innocent, Moore stated to the audience of members referring to the fact that the trial board consisted of Carpenters District Council designees as contrasted to what would have been a more stern approach by an 1102 trial board that if it had been up to him he would have [Charging Party's] "fat little fanny" suspended and out

of this local, conduct alleged unlawful by complaint paragraph 21.

On their face, complaint paragraphs 17 and 18 relate to alleged Respondent unlawful conduct involving United, an employer not shown to meet the Board's jurisdictional standards and thus dismissed. Paragraph 21, it is also worthy to note, deserves a similar fate because Pack's charges against the Charging Party, the precipitating cause of Moores's remarks, are based on the Charging Party's alleged conduct at variance with the Respondent's rules, bylaws, and constitution while he was employed at the sites of various employers not shown or even alleged to have met Board jurisdictional standards. The General Counsel seemed to stress only four alleged infractions by Bernier attacked by Respondent Union and thus the target of complaint paragraph 21: (a) working for an employer (United) although it allegedly had no contract with Respondent; (b) working for two different employers at the same time without union permission; (c) working without a steward; and (d) starting a job without notice to the Union. These four charges fell without proof at the District Council trial board, along with six other charges the General Counsel took no pains to identify, elaborate on, or connect to an employer under Board jurisdiction, for no apparent reason. While relevant to the finding of animus such matters are not within Board jurisdiction for purpose of sustaining paragraph 21 in the complaint and thus it is also dismissed.

D. *The Charging Party's Request for Referral*

In October 1993, Pack announced to members a forthcoming chance for work at the Fermi 2 plant where a regular maintenance was to occur. The Charging Party asked for the papers needed to facilitate the Company's hiring of employees and got them. Pack raised the matter of the member's criminal record as an obstacle. Later on January 4, 1994, Bernier returned to pursue his interest in being referred to the job, and Pack discouraged such efforts, representing that the Company goes back on felonies some 9 or 15 years, and in some cases 5 years. Bernier's last offense occurred in 1986 and involved a ticket for disorderly conduct. At this hearing before me Respondent indicated it is familiar in detail with the criminal record in question so suspicion arises as to the bona fides in Pack's discouragement; especially since director of security for Fermi 2, Joseph Korte, testifies that an offense in and of itself is not the determining factor in an applicant being employed, that how long ago it occurred, its nature, the character and reputation of the applicant since, his employment record, and his age are all considered. I doubt seriously that Pack didn't know this as a veteran business agent. It should be noted also that the Charging Party has prior experience working at the Fermi 2 plant while under construction 1978 through 1984, before a screening process is put in place. In any event, as discussion continued, Pack sought documents which he believed useful in the then forthcoming trial against Bernier and Bernier mentioned that the Union had declared him the enemy and had been starving him out of work. Pack replied that the Charging Party had "made his bed." The Charging Party asked Pack to put his name on the out-of-work list and while seemingly doing so, Bernier asked if it was the Fermi list (the placement sought by Bernier) and Pack replied no, that he had a separate list for that. The Charging Party testified that Pack never did put his name down on that list and Pack does not deny this assertion. Pack also did not deny the specifics in the Charging Party's account leaving it intact, including Bernier's assertions that he kept asking about a referral to the Fermi 2 plant in February, March, and April 1994 at a time when friends there, three fellow members called him (Russell Janis, Jerry Hodges, and Charles McDowell) urging him to keep trying to get on. UE&C Project Manager Anderson testified to many more hires of millwrights, about 77, than normally are needed during February to July since he began at Fermi in 1992. (G.C. Exh. 14.) Respondent never referred the Charging Party.

E. *The Referral System*

Local 1102 has an informal, loosely run job referral system generally speaking a nonexclusive system, according to testimony at this hearing. Many jobs come to millwright members from their own efforts. When necessary, members "get on" the out-of-work list when one of the five business agents puts their names down on pieces of paper during a member's visit to the hall, or after a phone call. Without getting your name down there's usually no referral made, yet there is no clear-cut way or time when a member should do so, except it is not appropriate to do so unless the member is in fact out of work. The Charging Party also testified there are no known practices by which a member loses his turn by a certain time unless he has "signed on" before then. The member is supposed to call in and have his name removed after getting a job.

The practice regarding highly desirable work at the Fermi 2 plant during annual outages devoted to maintenance yielding good pay and reliable work is different. This employer hires only through Local 1102 although the paperwork packages for applying can be picked up at the union office or at the plant, so as to permit and encourage prequalifying which allows the screening process referred to above to compile acceptable hires in advance of their being needed on the job. This avoids down time in staffing the force.

F. *The Asserted Reason for Respondent's Refusal to Refer*

Respondent filed a detailed position letter to the Regional Office on June 9, 1994, in response to the charge herein, wherein it admits Respondent has not referred the Charging Party to the Fermi 2 plant, for the asserted reason of his "incompetence." (G.C. Exh. 2.) As noted above, the Charging Party worked there for 6 years evidencing no lack of demonstrated ability to perform the millwright work. Respondent's letter goes on to explain that by using the term incompetence—which one usually associates with lack of ability thus suggesting animus towards the Charging Party, Respondent means that felony convictions precluded in its judgment his employment at Fermi 2. The record shows however that Respondent's own business manager, financial secretary, and president of Carpenters District Council, Ralph Mabry, knew about another member's felony conviction and sentence to 2-1/2 years to 15 years imprisonment with release in 1988, because Mabry wrote a letter on the member's behalf in the presentencing stage, yet Respondent referred the member to the Fermi 2 plant in 1989, and occasionally since then in 1990, 1991, 1992, and 1994. The member most re-

cently had gone to the hall to pay dues and "put his name down" on the out-of-work list—Jerry Moore put his name down, and someone called him from the hall in late January or early February 1994 for work which he performed the rest of the month at the Fermi 2 plant. Brief and sketchy testimony as to Pack's discouraging another member with a criminal record from applying at the Fermi 2 plant offered by Respondent is simply devoid of specifics as to time or date or year; moreover; unlike here, Respondent took no action to prevent the member from getting on the out-of-work list nor did it refuse to refer him, so this testimony is considered unreliably vague as well as irrelevant and unpersuasive.

At the hearing, Pack testified he informed the Charging Party at one point in January 1994, when the latter requested information about his referral to the Fermi 2 plant that he was 29th on the list beyond the list of people who are already qualified and working there, that there were 48 people that would go first and that he was 29th after the 48th. He also testified that he never got a list from anyone indicating that the Charging Party had prequalified for the Fermi job like he would normally receive, he said from UE&C. Viewed in the context of the issues then before me it is obvious Pack was offering two more and different explanations behind Respondent's nonreferral of the Charging Party namely, that he hadn't been reached on the list, and had never prequalified. As to Pack's assertions regarding Bernier's place on the list it must be noted that Pack also testified he never kept a list, just kept it all in his head, so he either misled the Charging Party, tried to justify things, or purposely obfuscated to avoid being pinned down to any definite explanation lest it would turn out to not hold water. As for the latter explanation, it too fails because Anderson, project manager for UE&C over hiring testified that while he likes to request prequalified millwrights, Local 1102 does send out millwrights that are not always prequalified, and such referrals are never rejected just because they are not prequalified. He suggests that sometimes such referrals come from the out-of-work list and that prequalifieds cannot bump non prequalifieds ahead of them on the out-of-work list.

Respondent's final argument is that Respondent could hardly be referred if his name did not appear on the out-of-work list due to, Respondent argues, his working elsewhere on different occasions in this period of time, both due to some referrals by Respondent and jobs he found on his own. The short answer is that Respondent is found to have not placed the Charging Party on the out-of-work list for the the Fermi 2 plant and cannot therefore attribute the nonreferrals to his conduct.

The above-advanced reasons are demonstrated to be without merit and contradictory, evincing a desire to cover tracks and warranting a basis to infer a discriminatory motive behind the refusals to refer. Given the admitted fact that the Charging Party engaged in protected dissident activities, Respondent's knowledge thereof, its pattern of serious actions against him manifesting animus due to that conduct, the discriminatory motivation evinced by multiple, meritless, and contradictory reasons advanced for this action, as well as Respondent admissions, I find that the General Counsel has established a prima facie case for finding a violation. It thus falls upon Respondent to demonstrate by a preponderance in the evidence that it would have taken the action against the Charging Party alleged in the complaint, even aside from his protected activity, and this it has failed to do. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

For like reasons, I find Respondent as alleged in complaint paragraph 19 unlawfully attempted to discourage the Charging Party from filling out an application to work at the Fermi 2 plant on the occasions described above. Respondent Agent Pack exaggerated the nature, scope, and requirements in the screening process for employment at the Fermi 2 plant to the Charging Party, stressing an unreal stringency, especially the bleakness of the Charging Party's chances due to a criminal record then outdated, all the while knowing it wasn't as open and shut as he portrayed. Respondent argues there is a legitimate reason for the Local to preserve its jurisdiction and work for its member by referring record clean applicants, and this is true to a degree. However, it does not explain why Respondent knowingly referred a member with a felony record to the Fermi 2 plant on numerous occasions over several years and during the time the Charging Party asked to be so referred, so that such defense as applied to the Charging Party has a hollow ring, especially given Security Director Korte's directly contrasting testimony showing far more leniency and latitude in hiring decisions. Here, as well, the General Counsel establishes a prima facie case and Respondent fails to establish it would have discouraged this application even aside from the Charging Party's protected activities. Based on the foregoing. I conclude Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged in complaint paragraphs 19 and 20.

However, I do not make any findings of violations with respect to complaint paragraphs 17, 18, and 21 which allege unlawful union conduct involving Bernier and United Mechanical and Conveyor, Inc. because the General Counsel produced insufficient evidence that United Mechanical and Conveyor, Inc. is itself engaged in commerce within the meaning of the Act or meets the Board's jurisdictional standards, or that it is part of a multiemployer unit which includes employers who are so engaged. *Fisher Theatre*, 240 NLRB 678, 690 (1979), and cases cited.

CONCLUSIONS OF LAW

1. The Detroit Edison Company, and UE&C Catalytic, Inc. are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mechanical and Conveyor, Inc. has not been shown to be engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Millwrights Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Union has violated Section 8(b)(2) and (1)(A) of the Act by failing and refusing to refer the Charging Party to the Fermi 2 plant and by discouraging him from applying for work there because of his protected dissident activities running for office and opposing Respondent union officers and policies.

5. The unfair labor practices affect commerce within the meaning of the Act.

6. Respondent Union has not violated the Act in the remaining respects alleged in the complaint.

THE REMEDY

Having found Local 1102 engaged in unfair labor practices it will be ordered to cease and desist therefrom and to take affirmative action designed to effectuate the purpose of the Act, including making the Charging Party whole for any loss of earnings he may have suffered because of Respondent having refused to refer him for employment at the Detroit Edison Company, UE&C Catalytic, Inc. Fermi 2 plant in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]